

Message Text

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ORIGIN ARA-20

INFO OCT-01 IO-14 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10

L-03 NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03 SS-20

USIA-15 ACDA-19 EB-11 JUSE-00 DLOS-06 SAL-01 EUR-25

COA-02 COME-00 CG-00 /176 R

DRAFTED BY ARA/PAF:WSDIEDRICH:JZ

APPROVED BY ARA/PAF:BBELL

L/ARA:DAGANTZ (INFO)

ARA/PAN:DHOWARD (INFO)

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P 262117Z OCT 73

FM SECSTATE WASHDC

TO AMEMBASSY PANAMA PRIORITY

INFO AMEMBASSY SANTIAGO PRIORITY

USMISSION USUN NEW YORK

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E.O. 11652, N/A

TAGS:PFOR, PN

SUBJECT: PRESS GUIDANCE ON ATTACHED CUBAN SHIP

FOLLOWING GUIDANCE PREPARED FOR USE OF DEPARTMENT SPOKESMAN
AFTERNOON OF OCTOBER 26, 1973:

(BACKGROUND: ON OCTOBER 25 THE DEPARTMENT OF STATE
REQUESTED THE DEPARTMENT OF JUSTICE TO CONVEY TO THE
DISTRICT COURT FOR THE CANAL ZONE A SUGGESTION OF SOVEREIGN
IMMUNITY WITH RESPECT TO THE CUBAN SHIP IMIAS ATTACHED IN
THE CANAL OCTOBER 3, 1973.)

Q: MERCHANT SHIPPING IS NORMALLY CONSIDERED COMMERCIAL
ACTIVITY. ISN'T THIS SUGGESTION IN CONFLICT WITH THE TATE
LETTER OUTLINING THE STATE DEPARTMENT'S RESTRICTIVE THEORY
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OF SOVEREIGN IMMUNITY?

A: THE DECISION INVOLVES NO WEAKENING IN OUR ADHERENCE TO THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY, AS SET FORTH IN THE TATE LETTER. THE CIRCUMSTANCES IN THIS CASE ARE MOST UNUSUAL, AND WE CAN SEE NO INTERESTS SERVED IN HAVING IT LITIGATED IN A UNITED STATES COURT. ALTHOUGH THE UNDERLYING TRANSACTIONS -- THE SALE AND PURCHASE OF SUGAR -- IS CLEARLY OF A COMMERCIAL CHARACTER, THE EVENTS THAT DEVELOPED INVOLVE POLITICAL AND DIPLOMATIC CIRCUMSTANCES OF PECULIAR SENSITIVITY.

THE CASE AS IT HAS DEVELOPED IS ESSENTIALLY ONE OF A HIGHLY POLITICAL CHARACTER BETWEEN TWO FOREIGN SOVEREIGNS; AND THE MOTIVATING CONSIDERATION OF THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY -- TO PLACE PRIVATE PARTIES ON A PLANE EQUAL WITH THAT OF GOVERNMENTS IN COMMERCIAL LITIGATION -- DOES NOT APPLY IN THE MEASURE IT DOES IN A DISPUTE WHERE ONLY ONE GOVERNMENT IS INVOLVED.

THE CASE INVOLVES NO SIGNIFICANT CONTACTS WITH THE UNITED STATES OR ITS CITIZENS. THERE ARE NO SIGNIFICANT EFFECTS WITHIN THE UNITED STATES FLOWING FROM THE CONTRACTS IN QUESTION OR THEIR BREACH.

ALTHOUGH THE SHIP IN QUESTION ENTERED U.S. JURISDICTION VOLUNTARILY, IT DID SO SOLELY FOR THE PURPOSE OF PASSING THROUGH THE PANAMA CANAL, AND NOT FOR THE PURPOSE OF COMMERCIAL INTERCOURSE WITH THE UNITED STATES OR ITS CITIZENS.

Q: IS THE DEPARTMENT'S RESPONSE AN ACCEPTANCE OF THE ABSOLUTE THEORY OF SOVEREIGN IMMUNITY AS ARGUED BY THE GOVERNMENT OF CUBA?

A: NO. THE DEPARTMENT CONTINUES TO FOLLOW THE RESTRICTIVE THEORY BASED ON THE TATE LETTER AND OTHER FOREIGN POLICY CONSIDERATIONS WHICH MAY BE APPROPRIATE IN A PARTICULAR CASE.

Q: ISN'T THE DEPARTMENT'S ACTION IN THIS CASE AN IMPLICIT LIMITED OFFICIAL USE

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ACCEPTANCE OF THE PANAMANIAN GOVERNMENT'S CONTENTION THAT ATTACHMENT OF SHIPS IN THE CANAL ZONE IS CONTRARY TO INTERNATIONAL LAW?

A: NO. SHIPS HAVE BEEN ATTACHED BY COURTS IN THE CANAL ZONE FOR MORE THAN 70 YEARS, UNDER A PRACTICE WHICH IS ENTIRELY CONSISTENT WITH INTERNATIONAL LAW.

Q: DOES THE DEPARTMENT'S DECISION HERE INDICATE THE EMERGENCE OF A NEW POLICY WITH RESPECT TO ATTACHMENT OF SHIPS IN THE CANAL ZONE?

A: NO. THE JURISDICTION OF THE U.S. DISTRICT COURT IN THE CANAL ZONE IS ESTABLISHED BY LEGISLATION. OUR DECISION TO SUGGEST IMMUNITY IN THIS CASE MUST BE SEEN IN THE LIGHT OF ALL THE FACTS OF THE CASE AND A SIMILAR DECISION SHOULD NOT BE ASSUMED IN OTHER CASES IN THE ZONE OR ELSEWHERE.

Q: DOES THIS DECISION TODAY MEAN THAT THE DEPARTMENT WILL

ALSO SUGGEST SOVEREIGN IMMUNITY WITH RESPECT TO THE RUSSIAN SHIP WILLIAM FOSTER WHICH IS PRESENTLY UNDER AN ATTACHMENT ORDER IN THE CANAL ZONE?

A: WE HAVE RECEIVED NO REQUEST FOR IMMUNITY IN THAT CASE. IF A REQUEST IS MADE, IT WILL BE CONSIDERED ON ITS OWN MERITS.

DECONTROL JANUARY 26, 1974. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 26 OCT 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE211876
Document Source: CORE
Document Unique ID: 00
Drafter: WSDIEDRICH:JZ
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t1973108/aaaaaafc.tel
Line Count: 137
Locator: TEXT ON-LINE
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 23 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23-Jan-2002 by martinjw>; APPROVED <06 MAR 2002 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PRESS GUIDANCE ON ATTACHED CUBAN SHIP FOLLOWING GUIDANCE PREPARED FOR USE OF DEPARTMENT SPOKESMAN
TAGS: PFOR, PN
To: PANAMA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005